



## Senate

General Assembly

January Session, 2013

**File No. 145**

Senate Bill No. 320

*Senate, March 26, 2013*

The Committee on General Law reported through SEN. DOYLE of the 9th Dist., Chairperson of the Committee on the part of the Senate, that the bill ought to pass.

### ***AN ACT PROHIBITING PRICE GOUGING DURING SEVERE WEATHER EVENTS.***

Be it enacted by the Senate and House of Representatives in General Assembly convened:

1       Section 1. (NEW) (*Effective from passage*) (a) For purposes of this  
2       section, "consumer goods and services" means goods and services that  
3       are vital and necessary for the health, safety or welfare of consumers  
4       and are used, bought or rendered primarily for personal, family or  
5       household purposes, including, but not limited to, the provision of  
6       lodging, snow removal, flood abatement and post-storm cleanup or  
7       repair services.

8       (b) In the event that adverse weather conditions create an unusually  
9       high demand for consumer goods and services, the Governor may  
10      proclaim that a severe weather event emergency exists. Upon the  
11      proclamation of such emergency, the Governor shall post notice of  
12      such proclamation on the home page of the Internet web site of the  
13      office of the Governor. Upon determining that such severe weather  
14      event emergency has ended, the Governor shall post the end date of

15 such emergency on such web site.

16 (c) During such severe weather event emergency, no person within  
17 the chain of distribution of consumer goods and services shall sell or  
18 offer to sell consumer goods or services for a price that is  
19 unconscionably excessive.

20 (d) (1) A determination that a violation of subsection (c) of this  
21 section has occurred shall be based, among other factors, on the  
22 following: (A) That the price for which consumer goods and services  
23 were sold or offered to be sold was unconscionably excessive, (B) that  
24 there was an exercise of unfair leverage or unconscionable means, or  
25 (C) a combination of both factors in subparagraphs (A) and (B) of this  
26 subdivision. (2) Evidence that: (A) The price for which consumer  
27 goods and services were sold or offered to be sold represents a gross  
28 disparity between the price of the goods or services that were the  
29 subject of the transaction and their value measured by the average  
30 price at which such consumer goods or services were sold or offered to  
31 be sold by the defendant in the usual course of business during the  
32 thirty-day period prior to a severe weather event proclamation made  
33 by the Governor pursuant to subsection (b) of this section, or (B) the  
34 price for which consumer goods and services were sold or offered to  
35 be sold grossly exceeded the price at which the same or similar goods  
36 or services were readily obtainable by other consumers in the trade  
37 area shall constitute prima facie evidence that the price is  
38 unconscionably excessive. A defendant may rebut a prima facie case  
39 with evidence that additional costs not within the control of the  
40 defendant were imposed on the defendant for such goods or services.

41 (e) A seller of an energy resource, as defined in subsection (a) of  
42 section 42-234 of the general statutes, shall be exempt from the  
43 provisions of this section.

44 (f) A violation of subsection (c) of this section shall constitute an  
45 unfair trade or deceptive practice under subsection (a) of section 42-  
46 110b of the general statutes.

47 (g) Each violation and each day on which the violation occurs or  
48 continues shall be a separate offense.

49 (h) The provisions of this section shall not be construed to limit the  
50 ability of the Commissioner of Consumer Protection or the court from  
51 finding certain acts or practices unfair or deceptive pursuant to chapter  
52 735a of the general statutes in the absence of a severe weather event  
53 emergency proclamation made by the Governor pursuant to  
54 subsection (b) of this section.

This act shall take effect as follows and shall amend the following sections:		
Section 1	<i>from passage</i>	New section

**GL**      *Joint Favorable*

The following Fiscal Impact Statement and Bill Analysis are prepared for the benefit of the members of the General Assembly, solely for purposes of information, summarization and explanation and do not represent the intent of the General Assembly or either chamber thereof for any purpose. In general, fiscal impacts are based upon a variety of informational sources, including the analyst's professional knowledge. Whenever applicable, agency data is consulted as part of the analysis, however final products do not necessarily reflect an assessment from any specific department.

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***OFA Fiscal Note***

***State Impact:*** None

***Municipal Impact:*** None

***Explanation***

There is no fiscal impact to the Department of Consumer Protection in prohibiting price gouging during severe weather events, as the agency currently receives and acts upon such complaints.

***The Out Years***

***State Impact:*** None

***Municipal Impact:*** None

**OLR Bill Analysis****SB 320*****AN ACT PROHIBITING PRICE GOUGING DURING SEVERE WEATHER EVENTS.*****SUMMARY:**

This bill extends the bar on excessive price increases to goods and services sold during any severe weather event emergency that the governor proclaims (weather emergency). By law, price gouging is barred for (1) products under a civil preparedness emergency declaration, (2) products and services under a supply emergency declaration, and (3) energy resources during abnormal market disruptions.

Under the bill, no seller can sell or offer to sell any goods or services for an “unconscionably excessive price” during a weather emergency. The bill exempts energy resource (e.g., gasoline) sellers, who are covered under a separate price gouging law. Whether a price is unconscionably excessive is based on several factors, which a defendant may rebut.

A seller who violates the bill commits an unfair trade or deceptive practice (CUTPA) and each day on which the violation occurs or continues is a separate offense. However, the bill does not limit the Department of Consumer Protection (DCP) commissioner’s or a court’s authority to find the covered actions CUTPA violations in the absence of a governor’s proclamation.

EFFECTIVE DATE: Upon passage

**SEVERE WEATHER EVENT**

Under the bill, the governor may proclaim a severe weather event emergency exists when adverse weather conditions create an

unusually high demand for consumer goods or services. He must post a notice of the proclamation and its beginning and ending date on his office website.

## **PRICE GOUGING**

During a weather emergency, no seller can sell or offer to sell for an unconscionably excessive price, goods and services vital and necessary for consumer health, safety, or welfare and used, bought, or rendered primarily for personal, family, or household purposes. Goods and services include lodging, snow removal, flood abatement, and post-storm cleanup or repair services.

To determine if a price is unconscionably excessive, the DCP commissioner or court must consider: (1) whether the price was unconscionably excessive, (2) whether unfair leverage or unconscionable means were used, or (3) a combination of these factors. Prima facie evidence of unconscionable pricing exists when (1) there is a gross disparity between the price of the goods or services during the weather emergency and their average price 30 days before the emergency began or (2) evidence that the sale price for the goods and services grossly exceeded the sale price to consumers in the trade area.

A defendant may challenge or rebut prima facie evidence by showing that (1) he or she incurred additional costs to acquire the goods or services and (2) the additional costs were out of his or her control.

## **BACKGROUND**

### ***Price Gouging Law***

The law prohibits anyone from increasing the retail price of any goods, but not services, when the governor issues a disaster or transportation emergency declaration or the president issues any major disaster or emergency declaration (CGS § 42-230).

### ***Supply Emergency***

In the event of a state-wide, regional, or threatened shortage of a

product or service because of an abnormal market disruption, the governor may proclaim a supply emergency exists. He may then designate a product or service to be in short supply and impose price restrictions or ration them (CGS § 42-231).

Under a supply emergency, no one can sell or offer to sell a product or service at a price higher than it was sold or offered in the course of business just before the declaration (CGS § 42-232).

### ***Connecticut Unfair Trade Practices Act (CUTPA)***

The law prohibits businesses from engaging in unfair and deceptive acts or practices. CUTPA allows the DCP commissioner to issue regulations defining what constitutes an unfair trade practice, investigate complaints, issue cease and desist orders, order restitution in cases involving less than \$5,000, enter into consent agreements, ask the attorney general to seek injunctive relief, and accept voluntary statements of compliance. It also allows individuals to sue. Courts may issue restraining orders; award actual and punitive damages, costs, and reasonable attorney's fees; and impose civil penalties of up to \$5,000 for a willful violation and \$25,000 for violation of a restraining order.

### **COMMITTEE ACTION**

General Law Committee

Joint Favorable

Yea 18      Nay 0      (03/12/2013)